STATE OF MICHIGAN

COURT OF APPEALS

VIRGINIA REID,

Plaintiff-Appellant,

v

GRAND TRAVERSE BOARD OF COUNTY ROAD COMMISSIONERS,

Defendant-Appellee.

UNPUBLISHED
February 9, 2006

No. 257908
Grand Traverse Circuit Court
LC No. 02-022501-CH

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's judgment of no cause of action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and her late husband obtained title to a parcel of property in rural Grand Traverse County in 1954. A dirt road, known as Mayfield Trail, runs through the property. In approximately 2000, defendant widened the road. Plaintiff filed suit alleging trespass.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), alleging that because it had maintained the road since 1934 and the public had used the road for at least ten consecutive years after plaintiff and her husband obtained title to the property, the road was impliedly dedicated for public use pursuant to the highway-by-user statute, MCL 221.20.[1] Plaintiff stipulated that Mayfield Trail had become a highway-by-user between 1954 and 1964 by virtue of public use. However, the trial court denied defendant's motion on the ground that

[1] MCL 221.20 provides that a road that is or becomes a highway by user shall be "4 rods," or sixty-six feet, in width, with one-half of that width on either side of the road. Thus, MCL 221.20 provides a presumptive right-of-way of sixty-six feet, with the dividing line located in the center of the road. However, if the property owner establishes that, within the statutory period of ten years, the presumption was rebutted by the taking of action designed to restrict public use of the road, the width of the easement may be only as wide as the actual use of the road by the public. See *Kentwood v Sommerdyke Estate*, 458 Mich 642, 654-656; 581 NW2d 670 (1998).

questions of fact existed as to whether plaintiff's family took sufficient action to rebut the presumption that the public road was sixty-six feet wide.

The trial court conducted a bench trial on the issue whether evidence existed to support plaintiff's allegation that the presumption in MCL 221.20 had been rebutted. The evidence showed that in the late 1950's, plaintiff's family planted pine tree seedlings at various locations on the property, including adjacent to Mayfield Trail within the presumed right-of-way. The seedlings, which were planted in rows and protruded approximately four inches above the ground at the time they were planted, were placed among naturally occurring mature trees, and in some cases were surrounded by ferns. In addition, plaintiff's family placed signs reading "Keep Out" and "No Trespassing" on the property, including along Mayfield Trail.

The trial court ruled that the presumption in MCL 221.20 had not been rebutted. The trial court found that plaintiff's family's act of planting tree seedlings did not rebut the presumption because the seedlings were quite small, were planted among mature trees, and often were obscured by ferns. Similarly, the trial court found that the signs placed by the family did not rebut the presumption because they did not distinguish between the property owners' intent to prohibit entry onto any portion of the property as opposed to entry onto land just beyond the traveled portion of the road.

The legal requirements for establishing a highway-by-user are reviewed de novo. The trial court's findings of fact are reviewed for clear error. *Cimock v Conklin*, 233 Mich App 79, 84; 592 NW2d 401 (1998). A finding of fact is clearly erroneous if, after reviewing the record, we are left with the firm and definite conviction that a mistake has been made. *Id*.

Pursuant to MCL 221.20, a road used continuously by the public for ten years is impliedly dedicated to the public. If this presumption is not rebutted within the statutory period, the road is deemed to be dedicated to the full width of sixty-six feet. *Kentwood*, *supra* at 677-678. A property owner may rebut the presumption by taking action within the statutory period that tends to give notice to the public that the width of the right-of-way has been restricted. *Id*. at 659 n 6.

In the late 1950's, plaintiff's family planted tree seedlings along Mayfield Trail. However, the seedlings were planted at various locations on the property in addition to the side of Mayfield Trail, were only four inches tall when planted, were planted among naturally occurring mature trees, and often were obscured by ferns. Moreover, evidence showed that such planting was of no concern because it did not obstruct the use of the right-of-way. In addition, evidence showed that the signs placed by plaintiff's family were similar to those placed along other roads, were often lost or torn down, and did not state that their purpose was to restrict the right-of-way. No evidence showed that any action taken by plaintiff's family indicated to the public that the family intended the right-of-way to be less than sixty-six feet wide.

The trial court's finding that the presumption in MCL 221.20 was not rebutted is not clearly erroneous. *Kentwood*, *supra* at 659 n 6; *Cimock*, *supra*. The trial court did not err in holding that Mayfield Trail was dedicated to the full width of sixty-six feet. MCL 221.20.

Affirmed.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald